ANINA SAADUDIN v. DATUK SERI TENGKU ADNAN TENGKU MANSOR & ANOR

HIGH COURT MALAYA, KUALA LUMPUR
S NANTHA BALAN JC
[SUIT NO: 22NCVC-502-09-2015]
7 DECEMBER 2015

UNINCORPORATED ASSOCIATIONS: *Societies – Political party (UMNO) – Membership – Expulsion, legality of – Whether membership automatically invalidated upon member filing legal action against party – Jurisdiction – Whether court clothed with jurisdiction to hear and adjudicate disputes – Whether purely an internal party matter – Societies Act 1966, s. 18C – Applicability*

The plaintiff, a member of the United Malays National Organisation ('UMNO') filed a suit at the High Court ('Suit 473') against the Prime Minister of Malaysia ('President of UMNO'). In Suit 473, the plaintiff alleged that the president of UMNO had committed breach of trust in his capacity as a trustee or constructive trustee of UMNO with respect to certain monies that had been channelled into his personal account. Before Suit 473 was served on the defendants herein, the Secretary-General of UMNO ('D1') issued two letters dated 1 February and 2 February 2015 ('the impugned letter') in accordance with cl. 20.7 of the Constitution of UMNO ('COU'), to formalise the plaintiff's expulsion or cessation as a member of UMNO. In the present action, the plaintiff sought to challenge her sacking or cessation as a member of UMNO and to impugn the provision in the COU *ie* cl. 20.7 which automatically invalidated her membership upon filing any legal action in respect of any matter relating to the party or as regards to membership. In consequence, encl. 6 was filed by D1 and the Public Officer of UMNO ('D2') to strike out the plaintiff's action on the ground that the plaintiff's action concerned internal matters of UMNO. It was argued that pursuant s. 18C of the Societies Act 1966 ('Act'), the court had no jurisdiction to take cognisance of the plaintiff's complaint.

Held (allowing encl. 6 with costs):

(1) Section 18C of the Act was intended to denude the courts of any jurisdiction where the matter involves disputes and affairs of a political party. Since the coming into force of s. 18C of the Act, all attempts by disgruntled party members to take the grievances to court have failed regardless of the fact that the litigants have valid grounds to question and perhaps impugn the particular decision or meeting of the political party. Therefore, the rights and wrongs of the position taken by UMNO to treat the plaintiff as a ceased or expelled member of UMNO for having filed Suit 473 is not within the purview of the court's jurisdiction. (paras 44, 45 & 53)

(2) Section 18C of the Act simply does not allow for the plaintiff's complaints to be adjudicated by the courts. The plaintiff's remedy lies within the COU itself, which was to make an appeal (after three years) pursuant to cl. 20.11.2 of the COU for her membership to be reinstated, in line with s. 40 of the Act. Those were the contractual terms upon which the plaintiff agreed to become a member of UMNO. The plaintiff had no choice but to abide by those rules. (paras 54 & 55)

(3) Section 18C of the Act is widely and unambiguously worded and plainly applies to the factual matrix of this case and is effective to oust the jurisdiction of the court. The courts exist to do justice. But, justice must be justice according to law. Here, the law, *ie*, s. 18C of the Act, does not permit the court to adjudicate on the dispute pertaining to the plaintiff's membership in UMNO. This court is duty bound to apply and give effect to the statutory provision which had effectively deprived the plaintiff of access to justice. Thus, pursuant to s. 18C of the Act, the court has no jurisdiction to hear the dispute of and concerning the plaintiff's expulsion or cessation as a member of UMNO. (paras 57-59)

Case(s) referred to:

Amran Ab Rahman & Ors v. Dato' Hj Ikmal Hisham Abdul Aziz & Ors (No 2) [2013] 1 LNS 695 HC ***(refd)***

Duport Steel Ltd v. Sirs [1980] 1 WLR 142 ***(refd)***

Hendry Jamry Yakim & Anor v. Datuk Seri Mohd Najid & Ors [2014] 1 LNS 834 HC ***(refd)***

K Ramalingam Krishnamoorthy v. Mohammad Razin Abdullah, Pendaftar Pertubuhan Malaysia & Ors And Another Case [2015] 1 LNS 598 HC ***(refd)***

Pendaftar Pertubuhan v. Datuk Justine Jinggut [2013] 2 CLJ 362 FC ***(refd)***

Pendaftar Pertubuhan Malaysia v. PV Das; Datuk M Kayveas (Intervener) [2003] 3 CLJ 404 CA ***(refd)***

Syarikat Kenderaan Melayu Kelantan Bhd v. Transport Workers Union [1995] 2 CLJ 748 CA ***(refd)***

Legislation referred to:

Federal Constitution, arts. 5, 8, 10(1)(a), (b)
Rules of Court 2012, O. 18 r. 19(1)(a), (b), (c)
Societies Act 1966, ss. 9(c), 18C, 40

For the plaintiff - Hanif Khatri Abdullah (Irzan Iswat with him); M/s Hanif & Rajendran
For the defendants - Hafarizam Harun (Norhazira Abu Haiyan with him); M/s Hafarizam Wan & Aisha Mubarak

Reported by Sandra Gabriel

JUDGMENT

S Nantha Balan JC:

Introduction

[1] The issue in this case is whether this court has the requisite jurisdiction in law to hear and determine the plaintiff's complaint that she had been wrongfully expelled as a member of a political society. These are my grounds

in respect of an application (encl. 6) by the defendants to strike out the plaintiff's action herein under O. 18 r. 19(1)(a), (b), (c) of the Rules of Court 2012.

[2] The short point that arises for consideration in this application is whether the plaintiff's suit should be struck out on the grounds that pursuant to s. 18C of the Societies Act 1966, this court has no jurisdiction to hear and determine the plaintiff's grievances pertaining to the cessation of her membership in the United Malays National Organisation ("UMNO").

[3] Until recently the plaintiff was a member of UMNO. The first defendant ("D1") is the Secretary-General of UMNO. The second defendant ("D2") is the Public Officer of UMNO who has been designated as such pursuant to s. 9(c) of the Societies Act 1966. UMNO is governed by its constitution, the provisions of the Societies Act 1966 and generally the laws of Malaysia. UMNO is managed by the Supreme Council and has a disciplinary body known as the "Lembaga Disiplin" which deals specifically with disciplinary matters.

[4] The plaintiff's action herein is essentially to challenge a so-called decision which was taken by UMNO (as per its letters dated 1 and 2 September 2015) that in accordance with cl. 20.7 of the Constitution of UMNO she had ceased to be a member of UMNO. The sole question is whether this court has jurisdiction to hear and determine her complaint with respect to her expulsion or cessation as a member of UMNO.

Background

[5] At all material times the plaintiff was a member of UMNO. On 28 August 2015 the plaintiff filed a suit at Kuala Lumpur High Court namely Suit No. 22NCVC-473-08-2015 ("Suit 473") purportedly, in the name of and for the benefit of UMNO. The defendants in Suit 473 are, *inter alia*, the current Prime Minister of Malaysia/Finance Minister and President of UMNO, Datuk Seri Mohd Najib bin Tun Hj Abdul Razak who was named as the first defendant. In this judgment, I shall refer to Datuk Seri Mohd Najib bin Tun Hj Abdul Razak as "the President of UMNO". The plaintiff claims that Suit 473 was filed as a derivative action.

[6] In Suit 473, the plaintiff alleges that the President of UMNO had committed breach of trust in his capacity as trustee or constructive trustee of UMNO with respect to certain monies that had been channelled or as some have described it, funnelled into his personal bank accounts. The plaintiff claims that she filed Suit 473 as a derivative action for and on behalf of UMNO.

[7] In Suit 473, the plaintiff has sought various reliefs with respect to the monies that were channelled/funnelled into the personal bank accounts of the President of UMNO. It would suffice to say that for present purposes, the subject matter of and/or the issues and/or the merits or rulings

whatsoever in Suit 473, whilst no doubt, are of great public importance, interest and concern, are not germane to the instant suit before me and consequently does not necessitate any discussion or deliberation.

[8] To continue with the narrative, the plaintiff's action in filing Suit 473 precipitated an immediate rebuke and a fast and furious response by UMNO. Even before Suit 473 was served on the defendants therein, the fact that it had been filed became a matter of public knowledge. D1 promptly issued two letters dated 1 and 2 September 2015 (exh. AS-2 and AS-3 encl. 13) ("the impugned letters") which purport to formalise the plaintiff's expulsion or cessation as a member of UMNO pursuant to cl. 20.7 of the Constitution of UMNO. The plaintiff on the other hand, has alleged that even prior to delivering the impugned letters to the plaintiff, D1 had apparently circulated the letters or the content to the press and the public.

[9] The plaintiff claims that she was summarily expelled as a member of UMNO. In this suit, the plaintiff is challenging her expulsion or cessation as a member of UMNO. The impugned letters which were issued by D1 which are dated 1 and 2 September 2015 are indisputably predicated on cl. 20.7 of the constitution of UMNO which in turn was triggered by the plaintiffs act of filing Suit 473.

[10] The contents of the impugned letters are identical and it would suffice if the letter dated 1 September is reproduced. It reads as follows:

> 1 September 2015
>
> Puan Anina Binti Saadudin
> No. 1, Lot 1520 Jalan Kuala Teriang
> 07100 Pulau Langkawi
> Kedah Darul Aman
>
> Puan,
> Pemecatan Keahlian Umno Puan Anina Binti Saadudin
> No. Ahli : 02315624
> No. Kad Pengenalan : 750401-02-6010
> Cawangan : Kampong Padang Matsirat
> Bahagian : Langkawi
>
> Dengan hormatnya saya merujuk kepada perkara di atas.
>
> 2. Adalah dimaklumkan bahawa ibu pejabat UMNO memutuskan bahawa keahlian Puan di dalam parti telah **gugur dengan sendirinya** berkuat kuasa serta merta di bawah Fasal 20.7 Perlembagaan UMNO oleh kerana tindakan Puan membawa perkara ke Mahkamah.
>
> Sekian, terima kasih.
>
> Bersatu - Bersetia - Berkhidmat
>
> - t.t. -
>
> (Tengku Adnan Bin Tengku Mansor)
>
> (emphasis added)

[11] Under cl. 20.7 of the UMNO constitution, a member is deemed to have been automatically expelled if that member proceeds to file any action in relation to matters of and concerning UMNO. Clause 20.7 of UMNO constitution reads as follows:

> Clause 20.7:
>
> Seseorang ahli yang membawa apa-apa jua perkara parti atau hak keahliannya ke mahkamah sebelum mematuhi sepenuhnya peraturan-peraturan parti maka keahliannya di dalam parti gugur dengan sendirinya.

[12] On 3 September 2015 the plaintiff issued a letter to D1 objecting/protesting against D1's actions in issuing the impugned letters and giving D1 three working days to retract both these letters. Significantly in her letter dated 3 September 2015 (exh. AS-4 encl 13) the plaintiff defended her right as a member of UMNO to file the suit against the relevant parties for alleged wrongdoings. Thus, although the impugned letter did not specifically mention Suit 473, the plaintiff was not in any doubt as to which legal suit D1 was referring to in the impugned letters.

[13] To continue with the narrative, on 3 September 2015, the plaintiff served the writ and the statement of claim in respect of Suit 473 on the President of UMNO and on D2 as the public officer of UMNO. However, D1 refused to retract the impugned letters. In the present action, the plaintiff is challenging the lawfulness of her sacking or cessation as a member of UMNO and contends that there was a breach of natural justice, and a violation of her rights under arts. 5, 8 and 10 of the Federal Constitution of Malaysia. The plaintiff also alleges that her sacking or cessation as a member of UMNO was done in breach of the UMNO Constitution.

[14] The plaintiff also alleges that cl. 20.7 of the Constitution of UMNO is not applicable and/or is in any event null and void as it violates her rights pursuant to art. 5 and/or art. 8 and/or art. 10(1)(a) and/or art. 10(1)(b) of the Federal Constitution.

[15] The plaintiff also alleges that in issuing the impugned letters, D1 was actuated by *mala fides* and was a form of retaliation for the plaintiff's action in filing Suit 473. It is significant that in this action the plaintiff does not seek to impugn s. 18C of the Societies Act 1966 but rather seeks only to impugn the provision in the UMNO Constitution (ie, cl. 20.7) which automatically invalidates her membership upon filing legal action in respect of any matter relating to the party or as regards to membership.

[16] As such, the plaintiff accepts the validity and constitutionality of s. 18C of the Societies Act 1966 upon which the present application by the defendants to strike out is predicated. Indeed, at the outset, learned counsel for the plaintiff confirmed that this suit was not in the nature of a frontal

attack against s. 18C of the Societies Act 1966. At any rate, it is clear from the reliefs sought in this suit that the validity and constitutionality of s. 18C of the Societies Act 1966 is not being challenged.

The Reliefs Sought In The Suit

[17] In this suit, the plaintiff seeks the following reliefs:

(a) Perintah bahawa surat-surat bertarikh 2 September 2015 dan 1 September 2015 yang diisukan terhadap plaintif adalah tidak sah dan terbatal, dan tidak mempunyai kesan terhadap keahlian sah plaintif di dalam UMNO;

(b) Perintah bahawa pemecatan keahlian plaintif di dalam UMNO adalah tidak sah dan terbatal;

(c) Deklarasi bahawa Fasal 20.7 Perlembagaan UMNO adalah tidak terpakai dalam hal keadaan latar belakang fakta tindakan ini;

(d) Deklarasi bahawa Fasal 20.7 Perlembagaan UMNO adalah tidak sah dan/atau terbatal kerana berlanggaran Perkara 5 dan/atau Perkara 8 dan/atau Perkara 10(1)(a) dan atau Perkara 10(1)(c) Perlembagaan Persekutuan;

(e) Ganti rugi untuk ditaksir;

(f) Kos;

(g) Relif-relif lanjut dan/atau relif-relif lain sebagaimana yang mahkamah yang Mulia ini anggap sesuai dan wajar.

Striking Out- Section 18C Of The Societies Act 1966

[18] D1 and D2 have filed an application to strike out the plaintiff's suit as they contend that in as much as the subject matter of the plaintiff's suit pertains to matters concerning internal matters of UMNO which is a political party, pursuant s. 18C of the Societies Act 1966, this court has no jurisdiction to take cognisance of the plaintiff's complaint.

[19] As such, D1 and D2 maintain that the plaintiff's action is an abuse of process and must be struck off. Section 18C of the Societies Act 1966 reads as follows:

Section 18C of the Societies Act 1966

The decision of a political party or any person authorised by it or by its constitution or rules or regulations made thereunder on the interpretation of its constitution, rules or regulations or on any matter relating to the affairs of the party shall be final and conclusive and such decision shall not be challenged, appealed against, reviewed, quashed or called in question in any court on any ground, and **no court shall have jurisdiction** to entertain or determine any suit, application, question or proceeding **on any ground** regarding the validity of such decision.

(emphasis added)

Submissions For The Plaintiff

[20] For the plaintiff, learned counsel Encik Hanif Khatri Abdullah submitted that the impugned letters are ambiguous as they do not identify the particular legal suit which the plaintiff is alleged to have filed and which had triggered cl. 20.7 of the UMNO Constitution resulting in the cessation of the plaintiff's membership in UMNO.

[21] Next, counsel took umbrage with the fact that the impugned letters state that "Ibu Pejabat UMNO memutuskan bahawa keahlian saudari telah gugur". In this regard, he said that the UMNO Constitution makes no provision for decisions to be made by "Ibu Pejabat UMNO".

[22] His next complaint is that since the plaintiff had allegedly ceased to be a member of UMNO by reason of cl. 20.7 of the UMNO Constitution, the caption of the impugned letters should refer to "Keguguran Keahlian" rather than "Pemecatan Keahlian".

[23] Counsel's next point was that D1 was not authorised by the UMNO Constitution to issue the impugned letters.

[24] Counsel's final point was that it is unclear whether matters relating to a legal challenge to cessation or expulsion from membership of a political party fall within the ambit of s. 18C of the Societies Act 1966 and that by itself warrants a trial of the action. Therefore this matter should not be summarily dismissed and struck out.

Submissions For The Defendants

[25] At the outset, learned counsel for the defendants, Dato' Hafarizam bin Harun relied on the following cases to bolster his argument that the plaintiff's suit herein should be struck out.

The cases are:

(i) *K Ramalingam Krishnamoorthy v. Mohammad Razin Abdullah, Pendaftar Pertubuhan Malaysia & Ors & Another Case* [2015]1 LNS 598 HC;

(ii) *Hendry Jamry Yakim & Anor v. Datuk Seri Mohd Najid & Ors* [2014] 1 LNS 834 HC;

(iii) *Amran Ab Rahman & Ors v Dato' Hj Ikmal Hisham Bin Abdul Aziz & Ors (No 2)* [2013] 1 LNS 695; [2015] 7 MLJ 743, [2013] MLJU 909 HC;

(iv) *Pendaftar Pertubuhan Malaysia v. PV Das; Datuk M Kayveas (Intervener)* [2003] 3 CLJ 404; [2003] 3 MLJ 449 CA;

(v) *Pendaftar Pertubuhan v. Datuk Justin Jinggut* [2013] 2 CLJ 362; [2013] 3 MLJ 16 FC

[26] In particular, the following passage from the case of *Pendaftar Pertubuhan v. Datuk Justin Jinggut* [2013] 2 CLJ 362; [2013] 3 MLJ 16 FC pertaining to s. 18C of the Societies Act 1966 (per Abdull Hamid Embong FCJ) was relied upon:

> [37] We agree with the learned senior federal counsel, for the ROS who submitted that, in any event, s 18C of the Act clearly **excludes the jurisdiction of the courts** from going into the merits **of any disputes** between members of a political party. Section 18C states that:
>
> Decision of political party to be final and conclusive
>
> 18C. The decision of a political party or any person authorised by it or by its constitution or rules or regulations made thereunder on the interpretation of its constitution, rules or regulations or on any matter relating to the affairs of the party shall be final and conclusive and such decision shall not be challenged, appealed against, reviewed, quashed or called in question in any court on any ground, and no court shall have jurisdiction to entertain or determine any suit, application, question or proceeding on any ground regarding the validity of such decision.
>
> (emphasis added)
>
> [38] So clearly the court is restrained from questioning the decisions made by the disputing parties of a political party at their respective meetings. The concluding phrase in s 18C as we underscored above was considered by the Court of Appeal in *Pendaftar Pertubuhan Malaysia v. PV Das; Datuk M Kayveas (Intervener)* [2003] 3 CLJ 404; [2003] 3 MLJ 449, where the court; with which we agree, held that:
>
> [1] Effect must be given to the intention of Parliament in legislating s. 18C of the Societies Act 1966. In s. 18C, Parliament did not stop at the words 'shall be final and conclusive and … shall not be challenged, appealed against, reviewed, quashed or called in question in any court'. It went further to provide '… on any ground, *and no court shall have jurisdiction to entertain or determine any suit, application, question or proceeding on any ground regarding the validity of such decision'. These words clearly show that Parliament intended to exclude the jurisdiction of the courts*. Also, the dispute regarding the validity of the Extra Ordinary Delegates Conference, the election of Datuk M Kayveas and his supporters as president and Office Bearers respectively, the validity of the voting done and the resolutions passed etc, were decisions of a political party on any matter relating to the affairs of the party within s. 18C.
>
> (emphasis added)

[27] Learned counsel then submitted that the plaintiff should in any event abide by s. 40 of the Societies Act 1966 and seek recourse within the confines of the UMNO Constitution where it is provided in cl. 20.11.2 that after a lapse of three years from the date of her expulsion, she is entitled to lodge an appeal to the UMNO Supreme Council for a retraction or setting aside of the expulsion.

[28] Of course, this would mean that the plaintiff would be out in the cold, so to speak, for three years before she can even make an appeal to UMNO for her membership to be reinstated. In his submissions, counsel for the defendants reminded that the UMNO Constitution forms part of the contract between the plaintiff and the political party and that she had agreed to be bound by the terms of UMNO Constitution.

[29] The next point that counsel touched on was the plaintiff's alleged lack of *locus standi* to even file an action to challenge her expulsion. Counsel relied upon a passage from the case of *Hendry Jamry Yakim & Anor v. Datuk Seri Mohd Najid & Ors* [2014] 1 LNS 834.

[30] In that case the plaintiffs were members of UMNO and they discovered that they had ceased to be members of UMNO because they had been wrongly classified as being dead. They sought declarations with regards to their loss of membership. In that case Mr Justice Chew Soo Ho said:

> Since Plaintiffs have not exhausted all the party's rules or regulations to resolve his rights of membership before taking whatever matters or rights of memberships to Court, Defendants submitted that Plaintiff's memberships were automatically lost following their act of filing this claim in this Court under Article 20.7 above. Moreover, Plaintiffs were officially terminated their memberships by UMNO on 30.12.2013. Plaintiffs, it is submitted, not being a party member would have no *locus standi* to sue the Defendants as they do not have any nexus with UMNO and have no further interest in the proceedings within the party citing *Government of Malaysia v. Lim Kit Siang & Another* [1988] 1 CLJ Rep 63; [1988] 1 CLJ 219 S.C. Citing the Court of Appeal case of *Amran Bin Ab Rahman & 2 Others v. Dato' Haji Ikmal Hisham Bin Abdul Aziz & 2 others*, Appeal No W-02(NCVC)(W)-1478-06-2013 which unanimously held that the Appellants who were sacked under Article 20.7 of the UMNO Constitution lacked the necessary *locus standi* to maintain the said suit, it is clear that the Plaintiffs herein are in similar situation. Plaintiffs should have complied with the party's rules and regulations to resolve their membership issues before coming to Court on their membership issues.
>
> Now that they are no longer members of UMNO by virtue of Article 20.7 above, I am inclined to agree with Defendant's submission and on the authorities above that Plaintiffs, not being UMNO members having infringed Article 20.7 above which renders their membership being rescinded coupled with the official termination of their membership by letter, would have no nexus to be able to bring an action against their political party to which they are no longer members pertaining to the party activities or actions.

[31] Learned counsel then referred to s. 40 of the Societies Act 1966 and submitted that the plaintiff is obliged by the statute to exhaust her remedies as provided for by the rules of the society and may not take her case to court. Section 40 of the Societies Act 1966 reads as follows:

A Decision of Disputes

Section 40

(1) A dispute between:

(a) a member or subscriber or person claiming through a member or a
B subscriber or under the rules of a registered society and the society or an office-bearer thereof; and

(b) any person aggrieved who has ceased to be a member of a registered society or any person claiming through such person aggrieved, and the society or an office-bearer thereof, shall be decided in the manner directed by the rules of the registered society; and the
C decision so given shall be binding and conclusive on all parties without appeal, and shall not be removable to any court or restrainable by injunction; and application for the enforcement thereof may be made to a Sessions Court.

D **[32]** Counsel referred to the following passage in the case of *Hendry Jamry Yakim & Anor v. Datuk Seri Mohd Najib & Ors* [2014] 1 LNS 834 HC on the applicability of s. 40 of the Societies Act 1966, where the court made the following observation:

Section 40 of the Societies Act 1966 further empowers that the question
E of any person aggrieved who has ceased to be a member of a registered society or any person claiming through such person aggrieved, *inter alia*, shall be decided in the manner directed by the rules of the registered society; and the decision so given shall be binding and conclusive on all parties without appeal, and shall not be removable to any Court or restrainable by injunction. This provision again would bar the Plaintiffs
F from bringing an action to Court. They must apply to resolve their membership status to the registered society ie, UMNO in accordance with the Constitution, rules or regulations of UMNO. This Court has no jurisdiction under the Societies Act to determine on such issue which is the exclusive jurisdiction of the registered society and must be so determined by them only; see the cited case of *Burhan Ating & Ors v.*
G *Directors of Lands and Surveys & Ors* [1992] 2 CLJ (Rep) 211.

[33] As for the other points that were made by counsel for the plaintiff, learned counsel for the defendants said that this was not a case where a decision was made to expel the plaintiff, but rather the plaintiff ceased to be a member the moment she filed Suit 473. The fact that the impugned letters
H do not specifically make mention of Suit 473 is of no consequence as the plaintiff had, in her response by letter dated 3 September 2015, unequivocally defended her position in filing the legal action, although she had not expressly mentioned Suit 473.

[34] As for the appearance of the "Pemecatan" in the caption of the
I impugned letters, counsel says that that is a matter of semantics.

[35] As for the ambit of s. 18C of the Societies Act 1966, counsel submitted that it was enacted to keep all manner of disputes pertaining to the affairs of a political society, out of the scrutiny of the courts and that there is no ambiguity as to the scope of that section. He said that a dispute over the legality of the cessation of the plaintiff's membership in UMNO is patently a matter that falls within the ouster clause (s. 18C of the Societies Act 1966).

Analysis And Conclusion

[36] The first point that I will deal with is the plaintiff's complaint as regards the contents of the impugned letters. Here, it is clear that the plaintiff's termination or cessation ("keguguran") as a member of UMNO came about because she filed Suit 473.

[37] When the plaintiff responded to the impugned letters, she had absolutely no doubts that she had lost her membership because of the suit which she had filed. I do think that it is rather untenable to suggest that there should be a full trial to resolve the so-called ambiguity in the impugned letters.

[38] On this point, it should also be noted that when D1 issued the impugned letters, Suit 473 had not been served on the relevant parties, although information regarding Suit 473 was already circulating in the social and print media. Thus D1 cannot be faulted for not mentioning Suit 473 in the impugned letters.

[39] It was suggested that D1 and UMNO should have waited before issuing the impugned letters. I am not sure that I understand the justification for waiting. It was clear as night follows day that the plaintiff had filed a suit (ie, Suit 473) which pertained to the affairs or assets of UMNO which indisputably triggered cl. 20.7 of the UMNO Constitution.

[40] Indeed, a closer reading of the impugned letters shows that the word "gugur" actually appears in the body of the letters. As such, the plaintiff's complaint about the words "Pemecatan" and "Gugur" or "Keguguran" with reference to the impugned letters are plainly non-starters.

[41] As I said earlier, the plaintiff's termination or cessation of her membership in UMNO was not the result of any decision by the UMNO disciplinary machinery. Instead, her termination or cessation came about automatically upon the filing of Suit 473, and the impugned letters were mere formalities to notify her of her status as a ceased member of UMNO.

[42] Hence, it really does not matter that the impugned letters were signed by D1 or that they state that "Ibu Pejabat UMNO memutuskan" because there was in effect nothing to decide as this was a case of cessation of membership by operation of the contractually binding rules of the political society, to wit, cl. 20.7 of the UMNO Constitution.

[43] In my view even if the impugned letters are defective, that would still not invalidate the plaintiff's cessation of membership and the complaints as to the defects in the impugned letters would in any event, be beyond the jurisdiction of this court for the reasons as I shall explain in the subsequent part of this judgment.

Ouster Of The Court's Jurisdiction

[44] I now turn to the topic of ouster of the court's jurisdiction. In Malaysia, political parties are somewhat in an exalted, privileged and rare position in that their affairs and/or disputes are statutorily excluded from curial scrutiny by the courts by virtue of s. 18C of the Societies Act 1966 which was intended to denude the courts of any jurisdiction where the matter involves disputes and affairs of a political party.

[45] Since the coming into force of s. 18C of the Societies Act 1966, all attempts by disgruntled party members to take the grievances to court have failed. And this is regardless of the fact that the litigants may well have valid grounds to question and perhaps impugn the particular decision or meeting of the political party.

[46] Section 18C of the Societies Act 1966 admits of no exception and all manner of suits involving political parties are not to be entertained by the courts. At one time, it was thought that ouster clauses were of no effect where it is shown that the decision being challenged suffers from an error of law and therefore a nullity. See: Judgment of Gopal Sri Ram JCA (as he then was) in *Syarikat Kenderaan Melayu Kelantan Bhd v. Transport Workers Union* [1995] 2 CLJ 748; [1995] 2 MLJ 317 CA at p. 765 (CLJ); p. 342 (MLJ) where he said:

> It is neither feasible nor desirable to attempt an exhaustive definition of what amounts to an error of law, for the categories of such an error are not closed. But it may be safely said that an error of law would be disclosed if the decision-maker asks himself the wrong question or takes into account irrelevant considerations or omits to take into account relevant considerations (what may be conveniently termed an Anisminic error) or if he misconstrues the terms of any relevant statute, or misapplies or misstates a principle of the general law. Since an inferior tribunal has no jurisdiction to make an error of law, its decisions will not be immunised from judicial review by an ouster clause however widely drafted.

[47] That was of course said in the context of an inferior tribunal which is amenable to judicial review. But the analogy to the current issue is equally applicable although here it is not a question of judicial review but judicial scrutiny of a political society's internal affairs, which s. 18C of the Societies Act 1966 has very clearly delineated and excluded from the ambit of the court's overall supervisory jurisdiction.

[48] As for the proposition that was articulated by learned counsel for the plaintiff that there is doubt whether s. 18C of the Societies Act is wide enough to encompass a dispute pertaining to the plaintiff's expulsion or cessation of membership in circumstances where she had filed what she believes to be a derivative action on behalf of UMNO, it is my view that there is no ambiguity.

[49] Indeed, if this court were to entertain the suggestion that there is doubt as to the applicability of s. 18C of the Societies Act 1966 to the factual matrix of this case, then such a doubt or ambiguity would in my mind be a fanciful one. Hence, to accede to the arguments that were taken by counsel for the plaintiff would lead to a subtle form of judicial legislation which is antithetical to the role or function of the court. In this regard, it is appropriate to harken to Lord Diplock's warning in *Duport Steel Ltd v. Sirs* [1980] 1 WLR 142 when he said at pp. 157B-158C:

> it cannot be too strongly emphasised that the British constitution, though largely unwritten, is firmly based upon the separation of powers; Parliament makes the laws, the judiciary interpret them ... *Where the meaning of the statutory words is plain and unambiguous it is not for the judges to invent fancied ambiguities as an excuse for failing to give effect to its plain meaning because they themselves consider that the consequences of doing so would be inexpedient, or even unjust or immoral*. In controversial matters ... there is room for differences of opinion as to what is expedient, what is just and what is morally justifiable. Under our constitution it is Parliament's opinion on these matters that is paramount.
>
> (emphasis added)

[50] In this regard, there are some who regard s. 18C of the Societies Act 1966 as being an affront to the rule of law and to democracy itself. There is no doubt that s. 18C of the Societies Act has proved to be a tool of great utility in keeping political party disputes including but not limited to elections, meetings, suspension and/or expulsion from membership etc, away from the purview of the court's scrutiny.

[51] The common thread in all the cases is that court actions by disgruntled members or ex-members against political parties have all failed by reason of s. 18C of the Societies Act 1966 wherein these court actions were struck out *in limine*, without the merits of the complaint being heard. Of course, in reality, the end result is that the political party could become a law unto themselves as they are answerable to no one except perhaps to the general body of members or perhaps the Registrar of Societies.

[52] Thus, in theory a political party can decide willy-nilly to sack or suspend whoever they wish and for whatever reason. That is not to say or imply that the plaintiff here has ceased to be a member of UMNO for flippant reasons. On the contrary, she ceased to be a member of UMNO because she allegedly violated cl. 20.7 of the UMNO Constitution in taking a matter court, namely in filing Suit 473.

[53] As I said, the rights and wrongs of the position taken by UMNO to treat the plaintiff as a ceased or expelled member of UMNO for having filed Suit 473 is not within the purview of the court's jurisdiction.

[54] I am not for a moment suggesting that the plaintiff's complaints before this court *vis-a-vis* her cessation of membership in UMNO are unmeritorious. The law ie, s. 18C of the Societies Act 1966 simply does not allow for her complaints to be adjudicated by the courts. Her remedy, if at all there is one which is meaningful, lies within the UMNO Constitution itself, which is to make an appeal (after three years) pursuant to cl. 20.11.2 of the UMNO Constitution for her membership to be reinstated. This is also in line with s. 40 of the Societies Act 1966.

[55] No doubt, the three year wait is too long and it may be meaningless to apply to be reinstated as the landscape may well have changed by then but unfortunately those are the contractual terms upon which the plaintiff agreed to become a member of UMNO. And so she has no choice but to abide by those rules.

[56] As for the issue of the plaintiff's *locus standi* to file this suit, I have to state that I have not had the benefit of reading the grounds of judgment of the Court of Appeal in *Amran Ab Rahman & 2 Others v. Dato' Haji Ikmal Hisham Abdul Aziz & 2 Others*, Appeal No W-02(NCVC) (W)-1478-06-2013 wherein this proposition was apparently accepted by the Court of Appeal. However, the *locus standi* point was clearly ruled upon by the High Court in *Amran Ab Rahman & Ors v. Dato' Hj Ikmal Hisham Abdul Aziz & Ors (No 2)* [2013] 1 LNS 695; [2015] 7 MLJ 743, [2013] MLJU 909 HC. I can only assume that the Court of Appeal had agreed with the High Court's reasoning on *locus standi*. In any event, the issue of *locus standi* is a moot point in view of the basis for the ruling which I am about to make.

[57] In the upshot, for the reasons as discussed above, the view that I take is that s. 18C of the Societies Act 1966 is widely and unambiguously worded and plainly applies to the factual matrix of this case and is effective to oust the jurisdiction of this court.

[58] Learned counsel for the plaintiff emphasised that the court must have regard to the justice of the case. I agree. The courts exist to do justice. But, justice must be justice according to law. Here, the law, ie, s. 18C of the Societies Act 1966, does not permit this court to adjudicate on the dispute pertaining to the plaintiff's membership in UMNO.

[59] As such, it is clear that s. 18C of the Societies Act 1966 stands in the way of the plaintiff's recourse to the courts. This court is in any event, duty bound to apply and give effect to the statutory provision which has effectively deprived the plaintiff of access to justice. The topic of s. 18C of the Societies Act 1966 and its validity in the context of access to justice must

necessarily be postponed for consideration on a future date. For now, it is my ruling that pursuant to s. 18C of the Societies Act 1966, this court has no jurisdiction to hear the dispute of and concerning the plaintiff's expulsion or cessation as a member of UMNO.

[60] In the result, the application by the defendants' (encl. 6) succeeds and is hereby allowed. The plaintiff's suit is hereby dismissed and struck off. The plaintiff is hereby ordered to pay total costs of RM5,000 to the defendants.

Order accordingly.